

80



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,906	03/17/2004	Gary K. Michelson	101.0058-03000	5309
22882	7590	05/16/2005	EXAMINER	
MARTIN & FERRARO, LLP 1557 LAKE O'PINES STREET, NE HARTVILLE, OH 44632			REIP, DAVID OWEN	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 05/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/802,906		MICHELSON, GARY K.	
	<b>Examiner</b>		<b>Art Unit</b>	
	David O. Reip		3731	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/17/04, 8/30/04</u> .  | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-6 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification lacks support for the claim limitation "prongs." While it is understood from the Request for Interference, filed 3/17/04, that the applicant is characterizing bone screws as "prongs," such a characterization is contrary to the ordinary and customary meaning of "prongs" as found in the art of orthopedic plating systems. Indeed, the examiner could find no reference in the relevant art that used the word "prongs" when defining bone screws.

Nevertheless, since the applicant has chosen to characterize bone screws as "prongs," the examiner has done likewise in the following art rejection.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3731

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Biedermann et al (U.S. Pat. No. 5,041,113). Figs. 1-8 of Biedermann et al show a spinal plating system having all the limitations as recited in claims 1-6.

With respect to claim 1, Biedermann et al shows: a plate 1 including a first portion (the upper two segments having apertures 2 and 2', see Fig. 1A); a first aperture 2; a second portion (the next two segments below the upper two segments); a second aperture (the aperture below 2''); a reduced mid-portion 3' to facilitate bending of the plate; and at least two "prongs" (bone screws) 4, one of the prongs positioned between the first and second apertures adjacent the mid-portion (i.e. a bone screw inserted in aperture 2').

With respect to claims 2, 4 and 5, Biedermann et al shows opposing notches 3', which gives the plate an "hourglass" shape.

With respect to claim 3, the presence of corrugation 9 across the surface of the plate, including in the reduced width mid-portion 3', results in at least one groove "extending laterally across said plate between said first and second apertures to facilitate bending of said plate along said mid-portion."

With respect to claim 6, an additional prong 4 inserted in aperture 2" results in a construct that meets the limitations of the claim.

***Interference***

Claims 1-6 of this application have been substantially copied by the applicant from U. S. Patent No. 6,533,787. These claims are not patentable to the applicant because they are anticipated by Biedermann et al under 35 U.S. C. 102(b), as discussed above.

An interference cannot be initiated since a prerequisite for interference under 37 CFR 1.606 is that the claims be patentable to the applicant subject to a judgment in the interference.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David O. Reip whose telephone number is 571-272-4702. The examiner can normally be reached on 7 A.M.- 4 P.M. Mon-Thu and every other Fri..

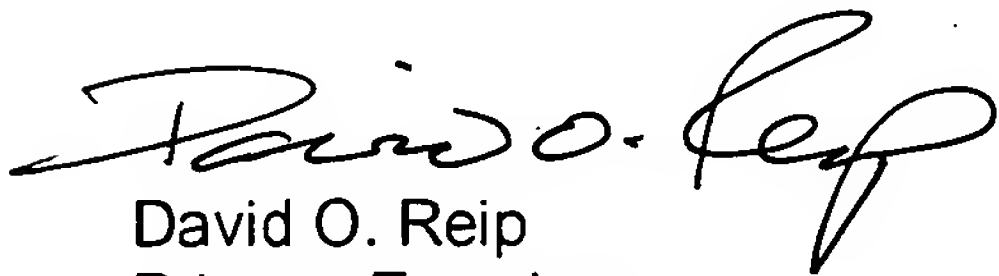
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3731

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "David O. Reip", is positioned above the printed name.

David O. Reip  
Primary Examiner  
AU 3731